

CHAPTER 23

INTOXICATING LIQUORS

H. F. 537

AN ACT to repeal the law as it appears in the following sections, to wit: section two thousand four hundred thirteen (2413) of the supplemental supplement to the code, 1915, as amended by chapter three hundred twenty-two (322) of the acts of the 37th general assembly, (C. C. 974); section two thousand four hundred fourteen (2414) of the code (C. C. 975); section twenty-four hundred fifteen (2415) of the supplemental supplement, 1915, as amended by chapter three hundred twenty-two (322), acts of the 37th general assembly (C. C. 976); and section two thousand four hundred sixteen (2416) of the code, as amended by chapter two hundred sixty-six (266), acts of the 38th general assembly (C. C. 977), and to enact substitutes therefor, relating to the information as to search warrants, providing for the seizure of intoxicating liquors and the seizure of instruments and material used in the manufacturing of intoxicating liquors and providing for the forfeiture and confiscation of intoxicating liquor and instruments and material used in the manufacturing of such liquors and for the disposition of the articles forfeited and their return when not forfeited.

Be it enacted by the General Assembly of the State of Iowa:

1 **SECTION 1. Repeal.** That the law as it appears in section two
2 thousand four hundred thirteen (2413) of the supplemental supple-
3 ment to the code, 1915, as amended by chapter three hundred twenty-
4 two (322) of the acts of the 37th general assembly (C. C. Sec. 974),
5 be and the same is hereby repealed and the following enacted in lieu
6 thereof:

1 **SEC. 2. Information for search warrant—issuance of warrant.** If
2 any credible resident of this state shall, before a magistrate, make
3 written information, supported by his oath, or affirmation, that he has
4 reason to believe, that any intoxicating liquor or instruments used,
5 or intended to be used, in the manufacture of intoxicating liquors, or
6 material used exclusively in the manufacture of intoxicating liquors
7 or material which may be used for legitimate purposes but which may
8 be used in the manufacture of intoxicating liquor and is possessed in
9 such quantities as to indicate that it is intended for such use, de-
10 scribed as particularly as may be in said information, is in said county,
11 in any place described as particularly as may be in said information,
12 owned or kept by any persons named or described in said information
13 as particularly as may be, and is intended by him to be used, sold
14 or had been purchased or procured as the result of solicitation, or
15 has been manufactured or transported in violation of the provisions
16 of this chapter, said magistrate shall, upon finding probable cause for
17 such information, issue his warrant of search, directed to any peace
18 officer in the county, describing as particularly as may be the liquor,
19 instruments or material and the place described in said information,
20 and the person named or described in said information, and the per-
21 sons named or described in said information as the owner or keeper
22 of said liquor, instruments or material and commanding the said
23 officer to search thoroughly said place, and to seize the said instru-
24 ments or material or the liquor with the vessels containing it, and
25 to keep the same securely until final action be had thereon.

1 **SEC. 3. Execution of warrant.** The peace officer to whom such
2 warrant shall be delivered shall forthwith obey and execute, as effec-
3 tually, as possible, the commands of said warrant, and make return
4 of his doings, to said magistrate and shall securely keep all liquors,
5 instruments and material so seized by him and the vessels containing
6 them until final action be had thereon.

1 **SEC. 4. Search warrant for dwelling house.** If the place to be
2 searched be a dwelling house in which any family resides, and in
3 which no tavern, eating house, grocery or other place of public resort
4 is kept, such warrant shall not be issued unless said complainant shall,
5 on oath or affirmation, declare before said magistrate that he has
6 reason to believe and does believe that within one month next before
7 the making of said information intoxicating liquor has been, in viola-
8 tion of this chapter, sold or manufactured in said house, or that
9 instruments or materials have been kept in said house with intent to
10 use the same in violation of the provisions of this chapter or in some
11 dependency thereof, by the person accused in said information, or by
12 his consent or permission; nor unless, from the facts and circum-
13 stances disclosed by such complaint, the said magistrate shall be of
14 the opinion that said complainant has adequate reason for such belief.
15 In all such prosecutions, the action shall be in the name of the State.

1 **SEC. 5. Repeal.** That the law as it appears in section two thousand
2 four hundred fourteen (2414), of the code, (C. C. Sec. 975), be and
3 the same is hereby repealed and the following enacted in lieu thereof:

1 **SEC. 6. Description of place and things.** The information and
2 search warrant in such case shall describe with reasonable particu-
3 larity the place to be searched, as well as the liquors or instruments
4 or material intended to be used or used in manufacturing intoxicating
5 liquor, to be seized.

6 When any liquors, instruments or material shall have been seized
7 by virtue of any such warrant, the same shall not be discharged or
8 returned to any person claiming the same by reason of any alleged
9 insufficiency of description in the warrant of the liquor, instruments
10 or material or place, but the claimant shall only have a right to be
11 heard on the merits of the case.

1 **SEC. 7. Repeal.** That section twenty-four hundred fifteen (2415)
2 of the supplemental supplement to the code, 1915, as amended by
3 chapter three hundred twenty-two (322) of the acts of the 37th gen-
4 eral assembly (C. C. Sec. 976), be and the same is hereby repealed
5 and the following enacted in lieu thereof:

1 **SEC. 8. Return—notice of forfeiture.** In the event of a seizure
2 under said warrant, the officer shall forthwith make a return of his
3 acts thereunder, and within forty-eight hours thereafter the magis-
4 trate who issued the warrant shall cause to be left at the place where
5 said liquor, instruments or material for manufacturing intoxicating
6 liquor was seized, if said place be a dwelling house, store or shop,
7 posted in some conspicuous place on or about said buildings, and also
8 to be left with or at the last known and usual place of residence of
9 the person named or described in said information as the owner or
10 keeper of said liquor, instruments or material, if he be a resident of
11 this state, a notice, summoning such person, and all others whom it

12 may concern, to appear before said magistrate within the county at
13 a place and time named in said notice, which time shall not be less
14 than five nor more than fifteen days after the posting and leaving
15 of said notices, and show cause, if any they have, why said instru-
16 ments, material or liquor, together with the vessels in which the same
17 is contained, should not be forfeited; and said notice shall, with
18 reasonable certainty, describe said instruments, material, liquor or
19 vessels, and shall state where, when and why the same were seized.

1 **SEC. 9. Appearance—hearing.** At the time and place prescribed
2 in said notice, the person named in said information, or any other
3 person claiming an interest in said liquor, instruments, material or
4 vessels, or any part thereof, may appear and show cause why the
5 same should not be forfeited, providing such claimant has filed a
6 claim for the liquors, instruments, or material or any part thereof,
7 setting out, under oath, that the articles claimed were not intended
8 for unlawful sale or use, and shall have entered into a bond with proper
9 security as determined by the magistrate to pay all costs incurred in
10 the proceeding from the beginning of the action of such seizure in
11 case the liquor, instruments or material, or any part of it so claimed
12 is finally declared forfeited, within three days prior to the time set
13 for the forfeiture hearing. If any person or persons shall so appear,
14 said magistrate shall, at the prescribed time, proceed to the trial of
15 said case, and said complainants or either of them may appear and
16 show cause why such liquor, instruments or material should not be
17 adjudged forfeited.

1 **SEC. 10. Procedure—jury trial—judgment.** The proceeding in the
2 trial of such case may be the same, substantially, as in cases of mis-
3 demeanor triable before justices of the peace, and if any person shall
4 appear and be made a party defendant as herein provided, and shall
5 make written plea that said liquor, instruments or material, or a part
6 thereof claimed by him, was not owned or kept with intent to be sold
7 or used in violation of this chapter, and was not purchased or pro-
8 cured as the result of solicitation, nor illegally transported, such party
9 defendant may, at his option, demand a jury to try the issue, and if,
10 upon the evidence presented, the said magistrate or jury, as the case
11 may be, shall, by verdict, find that said liquor, instruments or material
12 was, when seized, owned or kept by any person, whether said party
13 defendant or not for the purpose of being used or sold in violation
14 of this chapter or was purchased or procured as the result of solici-
15 tation or has been unlawfully transported, the said magistrate shall
16 render judgment that said liquor, instruments or material or said
17 part thereof, with the vessels in which it is contained is forfeited.

1 **SEC. 11. Costs.** If no person be made defendant in the manner
2 aforesaid, or if judgment be in favor of all the defendants who appear
3 and are made such, then the costs of the proceeding shall be paid as
4 in ordinary criminal prosecution where the prosecution fails. If the
5 judgment shall be against only one party defendant appearing as
6 aforesaid, he shall be adjudged to pay all the costs of proceedings in
7 the seizure and detention of the liquor, instruments or material
8 claimed by him, and trial, up to the time of judgment. But if such
9 judgment shall be against more than one party defendant claiming
10 distinct interests in said liquor, instruments or material, then the

11 costs of said proceedings and trial shall be, according to the discretion
12 of said magistrate, equitably apportioned among said defendants, and
13 execution shall be issued on said judgments against said defendants
14 for the amount of costs so adjudged against them.

1 **SEC. 12. Appeal.** Any person appearing as aforesaid may appeal
2 from said judgment or forfeiture, as to the whole or any part of said
3 liquor, instruments, material or vessels claimed by him and so ad-
4 judged forfeited, to the district court. In any such proceedings where
5 the judgment is against the state, it shall have the same right of
6 appeal, except that no bond shall be required, and if an appeal be
7 taken by the state, the same shall operate as a stay of proceedings
8 and the liquor, instruments or material seized under the warrant
9 shall not be returned to any claimant thereof until, upon the final
10 determination of said appeal, he is found entitled thereto.

1 **SEC. 13. Forfeiture by default.** If no person appears and claims
2 such liquors, instruments or material within three days prior to the
3 day set for the forfeiture hearing the magistrate shall enter an order
4 of forfeiture on default on the date set for the hearing.

1 **SEC. 14. Repeal.** That section two thousand four hundred sixteen
2 (2416) of the code, as amended by chapter two hundred sixty-six
3 (266), acts of the 38th general assembly, (C. C. Sec. 977), be and the
4 same is hereby repealed and the following enacted in lieu thereof:

1 **SEC. 15. Transcript to district court—delivery of liquors.** When
2 it shall be finally decided by any other than the district court that
3 intoxicating liquors or instruments or materials seized as aforesaid is
4 forfeited, the court rendering final judgment of forfeiture shall forth-
5 with file in the office of the clerk of the district court in the county
6 a certified transcript of such judgment and the officer having said
7 liquor, instruments or material in custody shall forthwith deliver the
8 same to the sheriff, taking itemized receipts therefor and shall file
9 one of said receipts with the clerk of the district court and the other
10 with the court rendering said judgment. The clerk of the district
11 court shall file the transcript as soon as received and enter a mem-
12 orandum thereof and the date of filing in the judgment docket and
13 from such entry it shall be treated in all respects and in its enforce-
14 ment as a judgment in the district court.

1 **SEC. 16. Restoration of liquors and things.** When it shall be
2 finally decided that any liquor, instruments or material so seized are
3 not liable to forfeiture, the court by whom such final decision shall
4 be rendered shall issue a written order to the officer having the same
5 in custody or to some other peace officer, to restore said liquor, instru-
6 ments or material with the vessels containing the same to the place
7 where it was seized as nearly as may be or to the person entitled to
8 receive it, which order the officer shall obey, and make return thereon
9 to the court of his acts thereunder and the costs of the proceeding in
10 such case attending the restoration, shall be taxed and paid by the
11 state.

1 **SEC. 17. Destruction of liquors—disposal to hospitals—board of**
2 **control.** When a transcript has been filed or a judgment has been
3 entered in the district court, decreeing a forfeiture of any intoxicating
4 liquors, instruments or material, the court, or a judge thereof in vaca-

4 tion, may direct the disposition of such liquor, instruments or ma-
5 terial and the vessels containing the same by ordering the destruction
6 thereof, or by ordering any portion thereof consisting of alcohol,
7 brandies, wine or whiskey delivered for medicinal or scientific pur-
8 poses to any state or reputable hospital in the county or adjoining
9 counties, and shall order any balance remaining, and the vessels con-
10 taining the same, turned over to the state board of control to be dis-
11 pensed to any state institution or reputable hospital in the state of
12 Iowa to be used for medicinal or scientific purposes.

13 The state board of control shall issue to the court under whose
14 order the said liquor was delivered to it, a receipt stating the kind
15 and quantity of liquor delivered to it and shall keep a strict account
16 of all liquors received and dispensed and shall make a full and com-
17 plete report of all such transactions each year to the governor of the
18 state.

1 SEC. 18. Destruction or sale of utensils. The court, or judge, as
2 the case may be in case of forfeiture shall also direct the disposition
3 of all instruments used in the manufacture of intoxicating liquors,
4 by directing the sheriff to convert such instruments into junk in such
5 a manner that it cannot again be used for manufacturing liquor, and
6 shall direct the sheriff to destroy all material which has no value for
7 any other purpose than making intoxicating liquor, and all material
8 which may have legitimate uses and the junk referred to shall be
9 sold by the sheriff as chattels under execution and all moneys realized
10 therefrom shall be turned into the treasury for the benefit of the
11 school fund of the county.

1 SEC. 19. Duty of clerk—execution of orders. The clerk of the
2 district court shall call to the attention of the court on the first day
3 of each term all judgments for the forfeiture of intoxicating liquor,
4 instruments or material, and for the disposition of which no order
5 has been theretofore made and the court shall thereupon enter an
6 order for the disposition of such liquors, instruments or material.
7 Upon the entry of any order for the disposition of any intoxicating
8 liquors, instruments or material, which have been adjudged forfeited,
9 the clerk shall forthwith transmit a certified copy thereof to the
10 sheriff for execution and the sheriff shall immediately take posses-
11 sion of such liquors, instruments or material and the vessels con-
12 taining the same, and make disposition thereof in accordance with
13 such order, and make return of his doing to the court.

1 SEC. 20. Transportation by common carrier—receipts and return.
2 When any such liquor is ordered delivered or shipped, the sheriff
3 shall securely attach to the box or package containing the same, a
4 certified copy of the order of the court and thereupon any railway
5 company, express company, or other common carrier may receive,
6 transport and deliver such liquor to the consignee.

7 The cost of packing and transportation shall be paid by the con-
8 signee receiving such liquor.

9 The sheriff shall take receipts for any liquor disposed of under the
10 provisions of this section, showing in detail the kind and quantity of
11 liquor delivered, the character of the vessels containing same, the
12 date and manner of delivery and, if delivery is made by common car-
rier, the name of such carrier. Such receipt shall be attached by the

13 sheriff to and filed with the return of his doings as herein provided for.

1 **SEC. 21. Interpreting clause.** Any statute of this state providing
2 for the destruction of intoxicating liquors shall be construed so that
3 the disposition of such liquors under the provisions of this chapter
4 shall constitute a destruction thereof within the meaning of such
5 statute.

Approved April 6, A. D. 1923.

CHAPTER 24

INTOXICATING LIQUORS

S. F. 265

AN ACT to provide for the seizure and disposition of any vehicle containing intoxicating liquors which are being transported in violation of law.

Be it enacted by the General Assembly of the State of Iowa:

1 **SECTION 1. Condemnation of conveyance—procedure.** When any
2 peace officer or other officer of the law shall discover any person in
3 the act of transporting in violation of the law, intoxicating liquors
4 in any wagon, buggy, by team, automobile, water or air craft, or
5 other vehicle, or other conveyance, it shall be his duty to seize any
6 and all intoxicating liquors found therein being transported contrary
7 to law. Whenever intoxicating liquors transported or possessed
8 illegally shall be seized by any officer, he shall take possession of the
9 wagon, buggy, team, automobile, water and air craft, vehicle or any
10 other conveyance, and shall arrest any person in charge thereof. Such
11 officer shall at once proceed against the person arrested as provided
12 by law; but the said vehicle or conveyance shall be turned over to the
13 sheriff of the county where taken, and retained in the custody of
14 said sheriff until disposed of as hereinafter provided, except it shall
15 be returned to the owner upon execution by him of a good and valid
16 bond with sufficient sureties in a sum double the value of the property,
17 which said bond shall be approved by the sheriff of the county and
18 shall be conditioned to return said property to the custody of said
19 sheriff on the day of trial and to abide the judgment of the court.
20 The court upon conviction of a person so arrested shall order the
21 liquor disposed of as provided by law, and unless good cause to the
22 contrary is shown by the owner, shall order the sheriff to sell at
23 public auction the property seized; and such officer shall, after de-
24 ducting the expenses of keeping the property, all costs which have
25 accrued and the cost of the sale, pay all liens, according to their
26 priority, which are established, by intervention or otherwise, at said
27 hearing or in other proceedings brought for said purposes, as being
28 bona fide and as having been created without the lienor having any
29 notice that the carrying vehicle was being used or was to be used for
30 illegal transportation of liquor, and shall pay the balance of the pro-
31 ceeds into the treasury of the county for the use and benefit of the
32 school fund. All liens against property sold under the provisions
33 of this section shall be transferred from the property to the proceeds